

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>NED COMER, ET AL.</b>	)	<b>Case No: 1:11-cv-220-LG-RHW</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>MURPHY OIL USA, INC., ET AL.,</b>	)	
	)	
<b>Defendants,</b>	)	
	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

**CERTAIN DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’ AMENDED  
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)**

Moving Defendants<sup>1</sup> hereby move to dismiss with prejudice Plaintiffs’ “Amended Class Action Complaint” [Dkt. # 28] pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth in the accompanying Memorandum Brief in Support of this Motion, Plaintiffs’ claims should be dismissed on multiple alternative grounds:

(1) Plaintiffs’ action must be dismissed under the doctrines of res judicata and collateral

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<sup>1</sup> The Moving Defendants are: Murphy Oil USA Inc.; Shell Oil Company; Chevron U.S.A. Inc.; ExxonMobil Corporation; BP Amoco Chemical Company; BP America Production Company; BP Energy Company; BP Products North America Inc.; Placid Oil Company; Kerr-McGee Oil & Gas Corporation; ConocoPhillips Company; Atlantic Richfield Company; Pioneer Natural Resources USA, Inc.; Occidental Crude Sales, Inc. (now known as “Occidental Energy Marketing, Inc.”); Occidental Energy Marketing, Inc.; Hess Corporation; Anadarko Petroleum Corporation; Apache Corporation; Burlington Resources Offshore Inc.; AEP Generating Co.; Columbus Southern Power Co.; Ohio Power Co.; Southwestern Electric Power Co.; AEP Texas Central Co.; AEP Texas North Co.; Appalachian Power Co.; Indiana Michigan Power Co.; Kentucky Power Co.; Public Service Co. of Oklahoma; Alabama Power Company; Georgia Power Company; Gulf Power Company; Southern Power Company; Tennessee Valley Authority; Xcel Energy Inc.; Northern States Power Company (Minnesota); North States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Co.; Cinergy Corp.; Duke Energy Corporation; Southern California Edison Company; Edison Mission Energy; Edison Mission Energy Petroleum; Edison Mission Energy Services, Inc.; LG&E Energy Inc.; Kentucky Utilities Company; Western Kentucky Energy Corp.; Carolina Power & Light Co.; Florida Power Corp.; Ameren Energy Generating Company; Union Electric Company; Ameren Illinois Company (incorrectly named as “Illinois Power Company” and “Central Illinois Light Company”); Entergy Corp.; Virginia Electric and Power Company; Dominion Energy Inc.; NextEra Energy, Inc.; Florida Power & Light Co.; The AES Corporation; E.I. DuPont de Nemours & Co.; Honeywell International, Inc.; and The Dow Chemical Co., Inc.

estoppel, in light of this Court's August 2007 Judgment dismissing, with prejudice, a materially identical suit. *See* Memorandum Brief at 15-31.

(2) The Court lacks subject matter jurisdiction over Plaintiffs' claims inasmuch as Plaintiffs lack standing under Article III of the U.S. Constitution. *See* Memorandum Brief at 31-39.

(3) The Court lacks subject matter jurisdiction over Plaintiffs' claims inasmuch as adjudication of Plaintiffs' claims would present nonjusticiable political questions. *See* Memorandum Brief at 39-45.

(4) Plaintiffs' claims are barred, as a matter of law, by the statute of limitations. *See* Memorandum Brief at 45-50.

(5) Plaintiffs' claims fail on the further ground that, as matter of law, Plaintiffs cannot establish the requisite proximate causation. *See* Memorandum Brief at 50-57.

(6) Plaintiffs' claims must be dismissed because, as a matter of law, Plaintiffs' claims are unavailable under federal or state common law on the following grounds:

(a) Plaintiffs' claims for relief on behalf of private parties have no basis in federal common law and, even if they did, any federal common law claim has been displaced. *See* Memorandum Brief at 57-63.

(b) Plaintiffs' state common law claims are preempted by federal law. *See* Memorandum Brief at 63-71.

For these reasons, as set forth more fully in the Memorandum Brief, Moving Defendants respectfully move that Plaintiffs' Amended Complaint be dismissed with prejudice.

This Motion is supported by the accompanying Memorandum Brief, and the Exhibits attached to this Motion, including the Declaration of W. Lee Watt.

Dated: October 14, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, W. Lee Watt, hereby certify that a copy of “Certain Defendants’ Joint Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)” has been served by electronic filing through the ECF System which provides electronic notice to all counsel of record.

Dated, this the 14th day of October, 2011.

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